

AMENDED IN ASSEMBLY JULY 6, 2005

AMENDED IN ASSEMBLY JUNE 23, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 14, 2005

SENATE BILL

No. 61

Introduced by Senator Battin

January 14, 2005

An act to amend the heading of Article 2 (commencing with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2 of, and to add Sections 1363.03 and 1363.09 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 61, as amended, Battin. Common interest developments: elections.

Existing law creates and regulates common interest developments and requires them to have a recorded declaration containing specified information and permits them to levy assessments. Existing law establishes, in certain situations, voting requirements for amendments of the declaration and the levy of assessments. Existing law establishes the Common Interest Development Open Meeting Act. Existing law requires that a common interest development be managed by an association. Existing law regulates a broad range of activities associated with statewide, local, and special elections.

This bill would require that elections within a common interest development regarding assessments, selection of members of the association board of directors, amendments to the governing documents, or the grant of exclusive use of common area property be

held by secret ballot, as specified. The bill would require that a common interest development select an independent 3rd party as an inspector of ~~elections~~ *election*, who would be granted specified powers, for these elections. The bill would require that ballots *and two preaddressed envelopes with instructions on how to return ballots* be mailed to each member at least 30 days prior to the deadline for voting, be handled in a specified manner, and that votes be counted and tabulated by the inspector in public at a noticed meeting. The bill would establish additional procedures for storage and review of election results. The bill would permit a member of an association to bring a civil action, as specified, for violations of these provisions, and other provisions regarding open meetings, by his or her association, and would impose a civil penalty of up to \$1,000 per violation.

The provisions of this bill would be operative only if AB 1098 is enacted and becomes effective, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 2 (commencing with
2 Section 1363.05) of Chapter 4 of Title 6 of Part 4 of Division 2
3 of the Civil Code is amended to read:

4
5 Article 2. Elections and Meetings

6
7 SEC. 2. Section 1363.03 is added to Article 2 (commencing
8 with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of
9 Division 2 of the Civil Code, to read:

10 1363.03. (a) Notwithstanding any other law or provision of
11 the governing documents, an election within a common interest
12 development regarding assessments, selection of members of the
13 association board of directors, amendments to the governing
14 documents, or the grant of exclusive use of common area
15 property pursuant to subdivision (d) of Section 1363.07 shall be
16 held by secret ballot in accordance with the procedures set forth
17 in this section.

18 (b) (1) The association shall select an independent third party
19 or parties as an inspector of ~~elections~~ *election*. The number of
20 inspectors of election shall be one or three. ~~An inspector of~~

~~elections may not simultaneously serve as a member of the board of directors.~~ The selection shall occur in one of the following ways:

(A) The board may appoint an inspector or inspectors of ~~elections~~ *election*.

(B) The association, through its rulemaking process, may adopt procedures in an open meeting for selecting an inspector or inspectors of ~~elections~~ *election*.

(C) The association may require that the inspector or inspectors be elected by the members of the association.

(2) For the purposes of this section, an independent third party includes, but is not limited to, a volunteer poll worker with the county registrar of voters, a licensee of the California Board of Accountancy, or a notary public who is not currently employed or under contract to the association for any other compensable services. An independent third party may be a member of the association, but may not be a member of the board of directors or a candidate for the board of directors or related to a member of the board of directors or a candidate for the board of directors.

(3) The inspector or inspectors of election shall do all of the following:

(A) Determine the number of memberships entitled to vote and the voting power of each.

(B) Determine the authenticity, validity, and effect of proxies, if any.

(C) ~~Receive votes and~~ ballots.

(D) Hear and determine all challenges and questions in any way arising *out of or* in connection with the right to vote.

(E) Count and tabulate all votes.

(F) Determine when the polls shall close.

(G) Determine the result of the election.

(H) Perform any acts as may be proper to conduct the election with fairness to all members in accordance with this section and all applicable rules of the association regarding the conduct of the election that are not in conflict with this section.

(4) An inspector of election shall perform his or her duties impartially, in good faith, to the best of his or her ability, and as expeditiously as is practical. If there are three inspectors of election, the decision or act of a majority shall be effective in all respects as the decision or act of all. Any report made by the

1 inspector or inspectors of election is prima facie evidence of the
2 facts stated in the report.

3 (c) Any instruction given in a proxy issued for an election that
4 directs the manner in which the proxy holder is to cast the vote
5 shall be set forth on a separate page of the proxy that can be
6 detached and given to the proxy holder to retain. The proxy
7 holder shall cast the member's vote by secret ballot.

8 (d) *Ballots and two preaddressed envelopes with instructions*
9 *on how to return ballots* shall be mailed by first-class mail or
10 delivered by the association to every member not less than 30
11 days prior to the deadline for voting. In order to preserve
12 confidentiality, a voter may not be identified by name, address,
13 or lot, parcel, or unit number on the ballot. The association shall
14 use as a model those procedures used by California counties for
15 ensuring confidentiality of voter absentee ballots, including all of
16 the following:

17 (1) The ballot itself is not signed by the voter, but is inserted
18 into an envelope that is sealed. This envelope is inserted into a
19 second envelope that is sealed. In the upper left hand corner of
20 the second envelope, the voter prints and signs his or her name,
21 address, and lot, or parcel, or unit number that entitles him or her
22 to vote.

23 (2) The second envelope is addressed to the inspector or
24 inspectors of election, who will be tallying the votes. The
25 envelope may be mailed or delivered by hand to a location
26 specified by the inspector or inspectors of election. The member
27 may request a receipt for delivery.

28 (e) All votes shall be counted and tabulated by the inspector or
29 inspectors of election in public at a properly noticed meeting of
30 the board of directors. Any candidate or other member of the
31 association may witness the counting and tabulation of the votes.
32 No person, including a member of the association or an employee
33 of the management company, shall open or otherwise review any
34 ballot prior to the time and place at which the ballots are counted
35 and tabulated.

36 (f) The results of the election shall be promptly reported to the
37 board of directors of the association and shall be recorded in the
38 minutes of the next meeting of the board of directors and shall be
39 available for review by members of the association. Within 15

1 days of the election, the board shall publicize the results of the
2 election in a communication directed to all members.

3 (g) ~~At all times during a campaign, the sealed ballots~~ *The*
4 *sealed ballots at all times* shall be in the custody of the inspector
5 or inspectors of election or at a location designated by the
6 inspector or inspectors until after the tabulation of the vote, at
7 which time custody shall be transferred to the association.

8 (h) After tabulation, election ballots shall be stored by the
9 association in a secure place for no less than one year after the
10 date of the election. In the event of a recount or other challenge
11 to the election process, the association shall, upon written
12 request, make the ballots available for inspection and review by
13 association members or their authorized representatives. Any
14 recount shall be conducted in a manner that shall preserve the
15 confidentiality of the vote.

16 (i) The provisions of this section apply to both incorporated
17 and unincorporated associations, notwithstanding any contrary
18 provision of the governing documents.

19 SEC. 3. Section 1363.09 is added to Article 2 (commencing
20 with Section 1363.05) of Chapter 4 of Title 6 of Part 4 of
21 Division 2 of the Civil Code, to read:

22 1363.09. (a) A member of an association may bring a civil
23 action for declaratory or equitable relief for a violation of this
24 article by an association of which he or she is a member,
25 including, but not limited to, injunctive relief, restitution, or a
26 combination thereof, within one year of the date the cause of
27 action accrues. Upon a finding that the election procedures of this
28 article, or the adoption of and adherence to rules provided by
29 Article 4 (commencing with Section 1357.100) of Chapter 2,
30 were not followed, a court may void any results of the election.

31 (b) A member who prevails in a civil action to enforce his or
32 her rights pursuant to this article shall be entitled to reasonable
33 attorney's fees and court costs, and the court may impose a civil
34 penalty of up to one thousand dollars (\$1,000) for each violation,
35 except that each identical violation shall be subject to only one
36 penalty if the violation affects each member of the association
37 equally. A prevailing association shall not recover any costs,
38 unless the court finds the action to be frivolous, unreasonable, or
39 without foundation.

1 (c) A cause of action under Section 1363.03 with respect to
2 access to association resources by candidates and advocates, the
3 receipt of a ballot by a member, or the counting, tabulation, or
4 reporting of, or access to, ballots for inspection and review after
5 tabulation may be brought in small claims court if the amount of
6 the demand does not exceed the jurisdiction of that court.

7 SEC. 4. This act shall become operative only if Assembly
8 Bill 1098 of the 2005-06 Regular Session is enacted and becomes
9 effective on or before January 1, 2006.